

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

JOSEPH SAMUEL LEWIS, #78518

PETITIONER

VERSUS

CIVIL ACTION NO. 1:10-cv-313-HSO-JMR

LAWRENCE KELLY

RESPONDENT

**ORDER OF TRANSFER PURSUANT
TO 28 U.S.C. § 1631**

This matter comes before the Court, *sua sponte*, for consideration of the transfer of this cause. Petitioner Lewis is an inmate of the Mississippi Department of Corrections, who filed this request for habeas corpus relief on July 12, 2010, pursuant to 28 U.S.C. § 2254. In this Petition Lewis is challenging his conviction for drug trafficking entered on March 26, 1989, by the Circuit Court of Harrison County, and his resulting life term of imprisonment.

Petitioner has previously filed a Petition for habeas relief in this Court challenging this same conviction and sentence, in *Lewis v. Kelly*, civil action number 1:01cv448 (S.D. Miss. Dec. 9, 2003). This Court entered a Final Judgment [20] which dismissed the case with prejudice, on December 9, 2003. The United States Court of Appeals for the Fifth Circuit denied Petitioner's request for a certificate of appealability on February 16, 2005, appeal number 04-60032.

A petitioner who is filing a second or successive motion for habeas relief must first apply to the appropriate court of appeals for an order authorizing the district court to consider the successive motion. 28 U.S.C. § 2244(b)(3)(A). The Fifth Circuit has defined "a second or successive petition as one that 1) raises a claim challenging the

petitioner's conviction or sentence that was or could have been raised in an earlier petition; or 2) otherwise constitutes an abuse of the writ." *Garcia v. Quarterman*, 573 F.3d 214, 220 (5th Cir. 2009)(citing *In re Cain*, 137 F.3d 234, 235 (5th Cir. 1998))(internal quotations omitted).

The Court finds the instant Petition to be a successive petition within the meaning of 28 U.S.C. § 2244(b)(3)(A). Petitioner has failed to submit any documentation demonstrating that he has obtained the required authorization to file this successive petition from the United States Court of Appeals for the Fifth Circuit. Therefore, this Court has determined that in the interest of justice, pursuant to 28 U.S.C. § 1631, this cause should be transferred to the United States Court of Appeals for the Fifth Circuit for a determination whether this successive or second Petition should be allowed. *See In re Epps*, 127 F.3d 364 (5th Cir. 1997). Accordingly, it is hereby,

ORDERED that this Petition for habeas corpus relief be, and the same hereby is, transferred to the United States Court of Appeals for the Fifth Circuit.

IT IS, FURTHER ORDERED, that the Clerk of Court is directed to close this case pending the decision of the United States Court of Appeals for the Fifth Circuit.

SO ORDERED, this the 8th day of September, 2010.

s/ Halil Suleyman Ozerden

HALIL SULEYMAN OZERDEN
UNITED STATES DISTRICT JUDGE